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ABSTRACT

This paper addresses the issue of affirmative action and emphasizes the positive aspects of the ongoing battle for racial justice. It is argued that despite pessimism, opposition, distortions, and continuing discrimination against blacks, civil rights enforcement continues to make significant progress. It is also pointed out that those individuals who criticize efforts by the Federal government and the courts to provide equal opportunities for blacks in education and other areas, fail to realize the progress that has been made since the civil rights movement began. Reference is made to specific cases in which the government or the courts upheld or clarified the civil rights of blacks and other minorities. (Author/EB)

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REMARKS BY

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BEFORE THE

THIRD ANNUAL
NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES
CONFERENCE

IN

DETROIT, MICHIGAN

FRIDAY, JUNE 22, 1979

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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It is a great pleasure to address once again the National Organization of Black Law Enforcement Executives. This conference focuses on what is certainly one of the most pressing issues confronting our nation: The status of efforts to make equality a fuller reality in American life, especially those efforts which have become identified by the short-hand phrase "affirmative action."

Ben Civiletti has gone into some detail about the Carter Administration's commitment to affirmative action and equal opportunity. What I would like to address this morning is the environment.

As you well know, many people have adopted a pessimistic attitude concerning the future of affirmative action. In some cases this posture has been assumed to warn against complacency. By forecasting doom, certain proponents of affirmative action seek to spur their constituencies into more intense efforts of protest and struggle against discrimination and inequality. Of course, this tactical consideration is also shaped by very real and distressing conditions:

- blacks constitute only 11 percent of the population but one-third of all Americans living below the official poverty line
- 75 percent of all black people searching for rental housing encounter discrimination

- the black unemployment rate is consistently twice that of whites

These and reams of statistics like them repeat a sad and all too familiar story. Moreover, forces are at work erecting new and increasingly subtle obstacles to the attainment of social justice.

Particularly troubling is the success certain sectors of the nation's legal and intellectual community have had in distorting the public view of what the affirmative action debate is all about. Evidence of this distortion can pop up in the most peculiar of settings. Three nights ago in a Washington, D.C., restaurant a young black lawyer -- himself a direct beneficiary of civil rights initiatives -- contemptuously dismissed affirmative action as "a handout." He suggested that we eschew affirmative action and instead depend wholly upon our own resources. He must have forgotten that indeed it was our own resources, our willingness to struggle in every arena, that finally succeeded in making the government assume its duty. That duty is to arrest discrimination in the present and also to remedy in all appropriate manners the cruel effects of discrimination in the past. What must be underscored is that groups eligible for affirmative action programs are not the privileged of our society but the victims of it, and that affirmative action programs are an attempt to rectify their collective hurt. Perhaps to this gathering such an

assertion seems laughably obvious. But in many circles of supposedly informed opinion the conventional wisdom seems to be that blacks have"made it." Yet to take but one example, after a decade of concentration upon making professional schools more accessible to qualified minorities, blacks remain woefully under-represented. Only 5 percent of the nation's medical students are black and the tale is much the same with black enrollment in law schools.

In the teeth of these facts it requires gross insensitivity to argue that affirmative action equals reverse discrimination. Yet this is precisely what is being said, often under the cloak of loyal commitment to civil rights ideals. Thus we witness people embrace "equal opportunity" but reject "preferential treatment," accept "goals and timetables" but repudiate "quotas." Language is cynically manipulated so that speech becomes the defense of the indefensible. And once again excuses are raised to deny legitimate aspirations for equal justice.

Obviously we have many struggles ahead. But without minimizing the difficulties mentioned earlier, I chose to emphasize another aspect of the complex and ambiguous condition of American democracy. I choose to emphasize the positive aspects of the ongoing battle for racial justice, the fact that civil rights enforcement -- despite opposition --

continues to make significant progress.

To a certain extent my emphasis, too, is prompted by tactical considerations. In the first place, it seems to me that hope and confidence are more conducive to struggle than fear and despair. In the second place, we should be wary of making doomsday forecasts since prophecies often have an eerie way of fulfilling themselves.

But tactical considerations aside, I think that even as trying as conditions are, they nonetheless leave room for qualified assurance. Of course I am disappointed when the federal bureaucracy reacts tardily to situations of massive discrimination. Yet I am heartened by a President who publicly and in private lends his weight to the protection of affirmative action.

Of course I am appalled by the resurgence of violent Klan activity in the South. Yet I am encouraged by victories like those a week ago in Alabama where the Justice Department successfully prosecuted Klansmen for interfering with black people's civil rights.

Of course it is troubling to see local governments try to dilute the voting strength of black citizens. Yet I am proud to be part of an Administration that vetoes these moves, in accordance with the Voting Rights Bill of 1965, even though some may say that these vetoes are politically expedient.

Despite all the talk about stagnation, the momentum generated by the civil rights revolution continues to transform our society politically, economically and morally in ways which result in enlarged opportunities for black Americans in practically every corner of national life. All one need do is reflect for a moment upon the significance of this very gathering, the fact that a black Assistant Attorney General is addressing the National Organization of Black Law Enforcement Executives. Law enforcement, for obvious reasons, has long been one of the areas of public service most inaccessible to black participation. And certainly it is no news to you that discrimination and other sorts of pressure continue to beset black law enforcement officers with all manner of special problems. Yet who can deny that this conference represents a consolidation of black power that would have seemed unreal even as recently as a decade ago? It is a consolidation that has been achieved by a tandem of pressures: by blacks on the one hand coming together to forge organizational strength in pursuit of their demands; and on the other, by the government's heightening tempo of suits challenging hiring and promotion patterns in local police departments across the nation.

The need for these suits and the need for NOBLE represent, simultaneously, cause for concern and cause for optimism: such is the nature of our social predicament. But what makes

me particularly eager to supplement dissent with affirmation is that sometimes out of disillusionment, partisans of civil rights enforcement unconsciously absorb the cynical attitudes of their foes. One such attitude views past triumphs in the courts, in Congress and in the White House as mere palliatives, paper victories without real substance. Some months ago, for instance, a magazine ran an article which suggested that in light of the massive de facto segregation which continues to characterize public schooling, the Supreme Court's ringing declaration in Brown v. Board of Education has been reduced to a quiet, uninspiring echo. All I can reply is that times are too crucial to accommodate this sort of historical amnesia. If one recalls for a moment the degradation that legal, overt, state-enforced segregation imposed upon black folks one can hardly remain unmoved by the change that has swept over our land during the past two decades. The problem is that Brown and subsequent decisions in its wake have so shifted the racial topography that what once appeared as a far-off mountain now seems a rather banal plateau.

Of couse, some of you are thinking, "well what about Bakke?"

A whole literature of gloom has arisen from the Bakke ruling. One newspaper described it, alarmingly, as "a 20th century Dred Scott decision." Commentary of this sort,

by hankering for the dramatic, simplified an exceedingly complex case. What we must realize, despite our understandable disappointment, is that the court reaffirmed the legitimacy of racial criteria as a way of remedying societal discrimination. Its challenge to affirmative action lay in Justice Powell's requirement that remedial programs be "precisely tailored" to meet certain constitutional standards. The affirmative action programat the Davis Medical school was unconstitutional, Powell found, because Davis was not a competent body to devise remedies for past societal discrimination that excluded whites from consideration. He acknowledged, however, that courts, legislatures and administrative agencies would be competent to make such findings and order appropriate relief. The legality of programs designed to provide increased opportunity for minorities may well turn, therefore, on the extent to which past discrimination has been documented and the type of means employed to remedy the effects of that discrimination. At the federal level, congressional findings of past discrimination and the establishment by that body of remedial mechanisms such as the minority set-aside provision of the Public Works Act would appear to meet Bakke requirements to the extent that one reads between the lines in a decision that speaks directly only to the university admissions question. Much remains unsettled. But as of now, one thing is clear: Bakke does not change

the law insofar as remedies for past discrimination are involved.

The Weber case, which could come down any day now, may well provide needed clarification concerning the permissable contours of affirmative action relief. I will not try to predict Weber's outcome. But it is instructive to note that even in the lower court rulings against the affirmative action program under consideration, the principle of affirmative action was again re-affirmed.

Plainly all is not lost. And those who speak in despairing tones, while perhaps seeming realistic, are misled by illusions. For what we cannot nor should not evade is the harshness of history. With assurance we must face that harshness, uplifted by the lessons of our people's past. Certainly two of those lessons include the efficacy of persistence, and the power of faith. So with faith in the law and determination in our hearts let us proceed with our struggle for equal justice.

Thank you.

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